IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1792 OF 2005

Latha Uchil ... Petitioner
aged about 52 years, Female
Hindu, Indian Inhabitant of
Mumbai, residing at Room No.
A/601, Dheeraj Ganga, Chincholi
Bunder Road, Malad (West),
Mumbai - 400 064.

V/s.

1. The Chairman, ... Respondents
   Raghavendra Swamy Educational
   Trust having his office address
   at Bldg. No. 1, Motilal Nagar
   No.1, Goregaon (W),
   Mumbai - 400 104.

2. M/s. M.N. English High School,
   (Primary Section), Office Bldg.
   No. 1, Motilal Nagar No. 1,
   Goregaon (West), Mumbai - 400 104.

3. Gunita Malhotra
   aged about 45 years, Female Hindu
   Indian Inhabitant of Mumbai,
   residing at, Land End. 101 B-Wing
   Near Ashoka Academy School,
   Lokhandwala Complex,
   Andheri (West), Mumbai - 400 043.

4. The Education Officer,
   Municipal Corporation of Greater
   Mumbai, having office at
   Hindu Colony, Dadar (E), Mumbai.

5. The Municipal Corporation of
   Greater Mumbai, Through the
   Municipal Commissioner, having its
   office at Mahanagar Palika Road,
   Mumbai - 400 001.

ALONG WITH

WRIT PETITION NO. 1793 OF 2005

Maya Panwala ... Petitioner
aged about 52 years, Female
Hindu, Indian Inhabitant of
Mumbai, residing at Flat No.
1/104, Suri Rajendra Tower,
R.K. Singh Marg, P.P. Road,
Andheri (E), Mumbai - 400 104,

V/s

1. The Chairman, ... Respondents
   Raghavendra Swamy Educational
   Trust having his office address
   at Bldg. No. 1, Motilal Nagar
   No.1, Goregaon (W),
   Mumbai - 400 104.

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   Near Ashoka Academy School,
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   Andheri (West), Mumbai - 400 043.

4. The Education Officer,
   Municipal Corporation of Greater
   Mumbai, having office at
   Hindu Colony, Dadar (E), Mumbai.

5. The Municipal Corporation of
   Greater Mumbai, Through the
   Municipal Commissioner, having its
   office at Mahanagar Palika Road,
   Mumbai - 400 001.

Mr. Sureshkumar J. Panicker with Ms. Pallavi R. Vishwasrao and Ms. Bhavika S. Kawle for petitioners.
Mr. Suresh Gole with Mrs. A.B. Shah for respondent Nos. 1 to 3.

Mrs. A.K. Savla for respondent Nos. 4 & 5.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : 29th September, 2006

ORAL JUDGMENT [PER : F.I. REBELLO,J.] :

. Rule. Heard forthwith.

2. The petitioner in Writ Petition No. 1792 of 2005 joined the respondent No. 2 School on 15.06.1987. Petitioner's qualifications are B.A. B.Ed. The petitioner's initial appointment was on probation and by order dated 15th June, 1989 petitioner was made permanent. The respondent No. 2 is an unaided primary school, recognised by Respondent No. 5 and petitioner was teaching in the primary section of the school. She was promoted as Head Mistress of primary section with effect from 14th June, 1999 and was functioning as Head Mistress till 1st July, 2004 and according to her she was forced to resign from the said post at the instance of respondent no. 3. In the course of academic year 2004-05, there were 8 teachers including petitioner and there were 8 divisions. There was no teacher who was on temporary basis. On account of respondent No. 3 claiming to act as trustee and interfering in the

administration of the school, differences have arisen between the management and the teachers. There was correspondence exchanged between the teachers and respondent management. On 15th June, 2005 on re-opening of the school for the academic year 2004-2005, the teachers were asked not to proceed to the class room. The petitioner reported for duty on 15th June, 2005 and was allowed to teach in the class. While she was teaching, she was handed over an order of dismissal which the petitioner received under protest. The petitioner has moved this Court on account of this order of dismissal, as according to the petitioner the provisions of Grant-In-Aid Code, do not provide for dismissal without enquiry and no appeal is also provided against such dismissal/termination.

3. The petitioner in Writ Petition No. 1793 of 2005 joined the school on 18.06.1987 and was confirmed as permanent teacher on 13.06.1989. She possesses qualification of B.A. B.Ed. Her services also came to be terminated in a like manner as petitioner in Writ Petition No. 1792 of 2005 by order dated 15th June, 2005 while she was teaching.

4. On behalf of management, reply has been filed by Balkrishna Govind Shetty, the Chairman. It is set out that under the provisions of Grant-In-Aid Code for primary schools, there is an alternate remedy available by way of appeal and as such this Court ought not to exercise its extra-ordinary jurisdiction. It is then pointed out that the petitioners are B.A. B.Ed. and as such were not qualified for the post of primary teachers and came to be dismissed for having assaulted a trustee. The number of students on 13th June, 2004 was 242 and on the date of the affidavit there were 287 students. In terms of Government Circular No. PRE 2000/(2587)/PE-1 dated 9th November, 2001, the essential qualification prescribed for the post of teacher of primary schools is S.S.C./ H.S.C. + D.Ed. under the M.E.P.S. (Conditions of Service) Rules, 1981. In the same circular it was stated that in some private primary schools, candidates with B.A./B.Com./B.Sc., B.Ed. were appointed and their appointments were not approved by the Education Officer. On account of conflicting judgments of various Division Benches of this Court, the matter was placed before a Full bench which took a view that for appointment as a primary teacher, training qualification of D.Ed. is proper and B.Ed. cannot be

held equivalent to D.Ed. and the candidates with qualification of B.A./B.Com/B.Ed. should not be appointed. Reference is then made to Government Resolution No. PRE 2000/(2587)/P-1 dated 9th November, 2001, which again makes reference to circular dated 25th October, 2000. By that circular, it is set out that minimum qualification for appointment in a primary school is S.S.C., D.Ed. and teacher with B.Ed. qualification are not eligible for appointment of teacher in primary school. The circular also points out that those who were appointed with B.Ed. qualification in primary schools prior to judgment dated 5th May, 2000 of Full Bench of this Court, and whose appointments had been approved by the competent officers, should be continued as untrained teachers and such teachers should be considered to be eligible to acquire D.Ed. qualification through correspondence course. The petitioners herein it is submitted were not qualified and they were un-trained.

. Insofar as resignation of petitioner in Writ Petition No. 1792 of 2005 as Head Mistress, it is pointed out that this was done as the petitioner and the Head Master of the secondary section promoted a student from IVth to Vth standard. This was detected

and it is for this reason that the petitioner resigned. Various other contentions have been denied. It is therefore submitted that the petitions ought to be dismissed.

5. The first question that we are called upon to answer is whether the petitions should be dismissed on the ground that the petitioners have an alternative and efficacious legal remedy. Appendix VII to the Grant-In-Aid Code, Rule 20 reads as under :-

> "Rule 20 - The teacher shall be free to make an appeal to the Education Officer, Primary Education Department, against the order of termination of service, under Rules 15 and 18 above, provided it is filed within 15 days of the actual receipt or refusal to receive the copy of the order of termination of service. The Education Officer will cause such enquiry as he may consider necessary to be made and will give his decision in the matter. It shall however, be open to the party or parties concerned to make a further

appeal to the Municipal Commissioner whose decision shall be final."

. Respondents have contended that appeal lies not only in respect of termination of service under Rules 15 and 18 but against all terminations. In our opinion, it will not be possible to accept the same. The Grant-In-Aid Code provides for termination in different circumstances. The relevant Rules are Rule 13 in the matter of termination of services of permanent teachers and Rules 14, 15 and 18. It is thus, clear that a termination under Rule 13, cannot be the subject matter of an appeal. An appeal under Rule 15 would lie, if an enquiry is conducted as contemplated by Rule 14. In the instant case no enquiry was conducted nor petitioners were paid compensation in terms of Rule 13 and or, if Rule 18 is attracted. The first contention, therefore, that the petitioners have an efficacious and alternate remedy and consequently this Court should not exercise its extraordinary jurisdiction deserves to be rejected. The respondents have placed reliance on the judgment of learned Division Bench of this Court in **Rita V. Verghese V/s. Headmistress, Vidya Mandir English**

Primary School, Bombay and ors., 2002(3) Mh.L.J. 57. The issue before the learned Bench was whether a private school recognised by local authority like Mumbai Municipal Corporation, is covered under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Act. The learned Bench after considering the controversy disagreed with the view taken by a learned Single Judge in **Shri Vasantrao Naik Education Society V/s. The Presiding Officer and another, 2000(4) Mh.L.J. 417.** It would thus be clear that issue before us was not in issue in the case of Rita T. Verghese (Supra). The ratio, of that judgment is that a primary school recognised by Bombay Municipal Corporation under Grant-In-Aid Code are not covered by the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Act. This authority does not support the respondent management at all and on the contrary holds that in case of private schools recognized by the Municipal Corporation of Greater Mumbai, it is the Grant-In-Aid Code, which would be applicable. Even otherwise considering that there are no disputed facts and it is a pure question of law, this would not be a fit case to exercise our extra-ordinary jurisdiction.

6. We may now deal with the next contention that it was within the authority of the respondent management to have terminated the services of the petitioners on the ground that they were not qualified. This argument is advanced on the basis that the qualifications as set out in Rule 6 of Appendix 7 of Grant-In-Aid Code, have been subsequently amended by Government Circulars on 25th October, 2000 and Government Circulars of 9th November, 2001. The contention urged is that, to be appointed as a primary teacher, the teacher must possess qualification of D.Ed. and if a teacher does not possess such qualification, then the services of such teacher can be terminated. We may first reproduce Rule 7 of Appendix VII of the Grant-In-Aid Code, which reads as under :-

> "It is desirable to have many trained teachers as possible in an Institution but in any case no institution shall recruit non-matriculate or non-S.S.C. or non-P.S.C. as teachers for imparting instruction or training in ordinary or Special Subject. For special subjects

> teachers trained in the special subjects shall be recruited."

. The Grant-In-Aid code has been framed pursuant to power under Section 62 (c)(3) of the Bombay Municipal Corporation Act, by the Bombay Municipal Corporation under resolution No. 939 dated 15th October, 1959 and sanctioned by the Government of Maharashtra, Education & Social Welfare Department of 5th August, 1963. Thus, it would be clear, therefore, that these are statutory rules pursuant to power conferred under Section 62 (c) (3) on the Bombay Municipal Corporation Act. In respect of teachers who were not qualified, when the rule came into force, in terms of Rule (6), Rule 7 provided as under :-

> "All unqualified teachers below the age of 35 on the day these rules come in force shall pass within five years either the Primary School Leaving Certificate or the S.S.C. Examinations."

. It would thus be clear that the qualifications under the provision of Grant-In-Aid Code is that a

teacher atleast ought to be matriculate or S.S.C. or P.S.C. The two letters relied upon by the respondent management are referable to the provisions of the Maharashtra Employees of Private School (Conditions of Service) Rule 1981, for primary teacher. This in no way can result in holding that irrespective of the Grant-In-Aid Code which has laid down the qualifications, the Government circular of 25th October, 2000 and 9th November, 2001 would be attracted. As noted earlier, those circulars apply to primary teachers in private schools as laid down under provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rule, 1981. Once there be two different legislations in the field, even though one may be primary legislation and another sub-ordinate legislation recognizing distinct categories of schools, there can be no conflict and they will operate in their own fields. The primary legislation is pursuant to an Act of the State Legislature and the sub-ordinate legislation is referable to the power conferred on the delegate by an Act of the State Legislature. The Grant-In-Aid Code covers primary schools of local body under the control of Bombay Municipal Corporation and the M.E.P.S. Act the other private primary schools, other than primary

schools under the control of local body. In our opinion, therefore, the question of terminating the services of teachers on the ground that they did not possess requisite qualifications cannot be sustained. That second contention, must, therefore be rejected.

7. We then come to the main issue as to whether the termination of the petitioners can be sustained. As we have noted earlier, there is power in the Management to terminate services of permanent teachers without enquiry and without assigning any reason by giving 12 months salary to the teachers, if the services of teachers were more than 12 years and six months salary in the event it was less than 10 years. The respondent-Management has not invoked rule 13 and consequently, even if respondent management invokes Rule 13 now that cannot be accepted, as procedure under Rule 13 has not been followed. Termination under Rule 13 if any without following the requirements of Rule 13 is illegal, null and void. Insofar as Rule 14 and 15 are concerned, termination can be effected after holding an enquiry and giving opportunity to teachers for furnishing written statement and leading evidence. No enquiry was conducted under Rule 14 and consequently it cannot be

said to be a dismissal under Rule 15. Under Rule 18, a power is conferred on the Management, in the event, after a regular enquiry, it is found that teacher is not guilty of any in sub-ordination or neglect of duty or mis-conduct (in each case of a serious nature), but who are otherwise regarded as unsuitable for retention in service as a result of the enquiry, can be terminated by giving three months notice. In the event, the Management wishes to discharge such a teacher immediately, he shall be given three month's salary in lieu of such notice. The termination was not effected under Rule 18 as no enquiry was conducted. We make it clear that we are not considering the validity of Rule 18 or Rule 13 in the context of permanent teachers considering the judgment of Supreme Court in **Central Inland Water Corp. V/s. Brojo Noth Ganguly, AIR 1986 SC 1571.** The Apex Court in that case has held that such a clause or Rule permitting the termination of service of a permanent employee by giving notice is against public policy or arbitrary. We are, therefore, clearly of the opinion that the action of the respondent management in terminating the services without following the procedure under the Grant-In-Aid Code was without the authority of law. The notice of termination received

on 15.06.2005 refers to Act of mis-conduct. No enquiry was conducted. In these circumstances we are clearly of the opinion, that the order of dismissal in both the cases is illegal, null and void and consequently liable to be quashed and set aside.

8. The learned counsel for the respondent management then contends that even if the order of dismissal is set aside, the petitioners should not be awarded full back wages and for that purpose has relied on the Judgment in in **U.P.S.R.T.C. V/s. Mitthu Singh, 2006 AIR SCW 4154**. Before adverting to the judgment, we may first note that it is a basic principle that on an order of dismissal being set aside, the employee/teacher should be reinstated with consequential benefits including back wages unless there is power in the statutory authority to modify the punishment or interfere with the punishment or relief of backwages. If an act is null and void and is set aside, the petitioner must be reinstated to the position where the petitioner stood before the illegal Act. There are cases like the Industrial Disputes Act where the Tribunal has power under Section 11-A to interfere with the order of termination. A Court exercising its extra-ordinary jurisdiction in such

cases may interfere with the order of punishment. In the instant cases without going into that issue, we proceed on the footing that there is power in this Court to interfere with the amount of back wages, though the Grant-In-Aid Code confers no such power in the Appellate Authority. In the instant case, there is no material on record to award anything less than full back wages. In that context, we may examine the judgment in Mitthu Singh (Supra). In that case, the respondent before the Supreme Court was working as a Driver with the appellant. In the past, the respondent had committed several acts of mis-conduct and had been punished. The checking squad of the appellant on three different occasions had called on respondent to stop the bus, which the Appellant had failed to do. Based on that complaint an enquiry was conducted. Pursuant to the enquiry, services of the Appellant were terminated by the respondent. A Reference was made under the I.D. Act. In the reference the Labour Court reinstated the respondent with continuity in service and back wages during the period of unemployment. The Writ Petition filed before Delhi High Court was dismissed and hence the matter reached the Supreme Court. Notice was issued on the limited point of back wages. The Court

considering its earlier judgments, where it had taken a view that payment of back wages is a discretionary power. The Court noted that while dealing with back wages, the Court must bear in mind the factual scenario on the principle of justice, equity and good conscience. In the case before it, considering the record, the Court held that it was not a fit case to grant back wages and interfere with the same. We may note that the ratio of those judgments are referable to the power in the Industrial Tribunal under Section 11-A of the Industrial Disputes Act, 1947, though that principle has also been extended to a case of retrenchment under the I.D. Act. In the instant case though there are allegations of mis-conduct alleged against the petitioner, they were given no opportunity to prove and establish that they were not guilty of mis-conduct as alleged by the management. Their termination was contrary to the rules under Grant-In-Aid Code which were applicable to the management. The management knowing that it is a school covered by provisions of Grant-In-Aid Code, none the less in an arbitrary manner terminated the services of the petitioners without giving them any opportunity. This is, therefore, not a fit case to interfere in the award of back wages.

9. It was contended on behalf of the respondent management that the teachers were drawing salary other than what is provided under the rule. We are afraid, we cannot go into issue as the grant of pay scale will be in terms of the rules and if any increments are given it is a managerial function. All that we can say is that the petitioners will be entitled to the wages as per the provisions of Bombay Grant-In-Aid Code and any rules made in that behalf. If the petitioners are aggrieved on account of any Act of the respondent in not paying their correct wages, liberty to them to move the Education Officer respondent No. 4, who after hearing parties will decide the controversy to the limited extent of disputed wages.

10. We are, therefore, clearly of the opinion, that the order of termination must be set aside and the petitioners should be entitled to be reinstated with full back wages and other consequential benefits including continuity of services. We however, make it clear, that this would not prevent the management, to take steps in law to which they are entitled for holding an enquiry by following due procedure.

11. In the light of that Rule made absolute in terms of prayer clauses (a) & (b). There shall be no order as to costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]